

THIS DISPOSITION IS NOT
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THE TTAB

Mailed:
January 18, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kerry Joyce

Serial No. 78250129

Lee Palmateer of Heslin Rothenberg Farley & Mesiti, P.C,
for Joyce Kerry.

Amy Gearin, Trademark Examining Attorney, Law Office 115
(Tomas V. Vlcek, Managing Attorney).

Before Seeherman, Quinn and Kuhlke, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Kerry Joyce, an individual, has appealed from the
final refusal of the Trademark Examining Attorney to
register BRIEF SHEETS as a mark for the following goods and
services:

Printed instructional pamphlets on a
wide variety of subjects, namely
etiquette and manners, grammar, thank
you notes, special occasions,
birthdays, graduations, debutant balls,
dances, weddings, funerals, fashion and
clothes, health and beauty care, diet,

cooking, architecture, interior design, furniture, landscaping, gardening, home construction, home maintenance and repair, computers and electronics, English and other languages, history, current events, arts and crafts, photography, science, automobiles, and automobile maintenance (Class 16);

Online publications, namely, instructional pamphlets on a wide variety of subjects, namely, etiquette and manners, grammar, thank you notes, special occasions, birthdays, graduations, debutant balls, dances, weddings, funerals, fashion and clothes, health and beauty care, diet, cooking, architecture, interior design, furniture, landscaping, gardening, home construction, home maintenance and repair, computers and electronics, English and other languages, history, current events, arts and crafts, photography, science, automobiles, and automobile maintenance; online instructional information in the field of photography (Class 41).¹

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of her identified goods and services.

Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

We turn first to a procedural point. On November 15, 2005, three months after the mailing of the Examining

¹ Application Serial No. 78250129, filed November 12, 2004 based on Section 1(b) of the Trademark Act.

Attorney's brief, applicant filed an objection to the Examining Attorney's request that we take judicial notice of certain definitions of "brief" and "sheet" that she had submitted as part of her brief. Applicant's objection is that the definitions submitted by the Examining Attorney do not show all the meanings of "brief" and "sheet."

Applicant also requests that, if the Board does take judicial notice of the definitions submitted by the Examining Attorney, we also take judicial notice of the entire definitions of these words which applicant has submitted with her request.

Applicant has provided no explanation as to why she waited until three months after the mailing of the Examining Attorney's brief to raise an objection. The time for filing a reply brief (which applicant chose not to do) is twenty days from the filing of the Examining Attorney's brief. We see no reason for allowing applicant to raise her objection to our taking judicial notice so much later than the deadline for filing a reply brief, when such an objection could have been raised in a reply brief.

Accordingly, applicant's objection is overruled. Moreover, we do not consider the Examining Attorney's listing of specific definitions for "brief" and "sheet" in her brief to have been done in an effort to mislead the Board. She

used these definitions as being, in her view, the apt meanings for the words in applicant's mark, as they would be understood in connection with the identified goods and services. As she also pointed out in her brief, "the fact that a term may have different meanings in another context is not controlling on the question of descriptiveness."

p. 3, citing *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

We also deny applicant's request that we take judicial notice of the dictionary definitions submitted with her November 15, 2005 request. Applicant's request is not timely. Applicant could have filed a reply brief requesting that we take judicial notice of additional dictionary definitions. As we previously stated, applicant chose not to do so, and we will not, in effect, extend the time for filing a reply brief by this means. We note, however, that applicant had previously made of record various definitions of "brief," and these definitions have been considered.

In applicant's brief, she states that during the examination of the application the Examining Attorney made of record certain Internet materials, but that "The scroll bars on the right hand side of each purported piece of evidence indicates that there is more information that was

not made part of the record." p. 7. Applicant made this comment in connection with her point that the information in these materials which use the words "brief sheet" may not in fact be short in length or concise, and we do not regard this statement as an objection that the Examining Attorney truncated documents in order to omit material that would be favorable to applicant. In any event, applicant could have submitted additional portions of the website material if she had thought it useful for her position.

This brings us to the substantive ground for refusal. It is the Examining Attorney's position that the mark is merely descriptive because it describes a significant attribute of applicant's goods and services, namely, that the identified instructional pamphlets, both printed and online, feature brief sheets or summaries of information on a variety of subjects. Applicant, on the other hand, argues that "brief sheets" can have many different meanings, since the word "brief" can be a verb, a noun or an adjective, and therefore one cannot know from the mark whether the goods are documents of short length (the adjectival meaning of "brief"), or are "authoritative memoranda, or abstracts of a larger document, or precise instructions on how to do something, or documents providing the essential information regarding specific subject

matter, or an outline" (the noun meanings of brief).²

Brief, p. 7.

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities or characteristics of the goods or services in connection with which it is used. On the other hand, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services, the mark is suggestive and registrable. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark or services with which the mark is

² The noun definitions of "brief" provided by applicant are "1.: an official letter or mandate; *especially*: a papal letter less formal than a bull; 2a: a concise article b: SYNOPSIS, SUMMARY c: a concise statement of a client's case made out for the instruction of counsel in a trial at law; 3: an outline of an argument; *especially*: a formal outline especially in law that sets forth the main contentions with supporting statements or evidence; 4 *plural*: short snug pants or underpants." Merriam-Webster Online Dictionary.

used in the marketplace. In re Engineering Systems Corp.,
2 USPQ2d 1075 (TTAB 1986).

The Examining Attorney has made of record a number of articles taken from the NEXIS database, as well as materials taken from the Internet.³ We note that in some of these materials the word "brief" is used in its adjectival meaning of "short in ...length,"⁴ such that the combined words "brief sheet" indicate that there is a limited amount of information on a piece of paper. See, for example, the following:

Here's a quick recipe for a salad that
is perfect for fall evenings.
Start by chopping up that long
ingredient list into two brief sheets:
a short staples grouping and a 10-item
list to take to the grocery store."
"Los Angeles Times," October 11, 1990

Summer Camp 2004 is fast approaching...
This notice includes a brief sheet on
each of the three camp facilities
providing programs in 2004.
(Notice to "all Scoutmasters, Advisors,
and Committee Chairmen" from
"Transatlantic Council Boy Scouts of
America"
www.tac-
bsa.org/tac_summer_camp_information.pdf

³ One of the Internet excerpts appears to be from the website of a city in Australia. We have not considered this excerpt in rendering our decision.

⁴ The complete definition of "brief" as an adjective, supplied by applicant from the Merriam-Webster Online Dictionary, is "1: short in duration, extent, or length; 2a: CONCISE b: CURT, ABRUPT."

We do not regard such evidence as showing, in connection with applicant's identified goods and services, that the phrase "brief sheets" is merely descriptive.

However, other material submitted by the Examining Attorney shows that "brief sheet" is used as a term that means an information summary. We note, in particular, the following:

Before the mystery begins, all guests are given a "brief sheet", detailing the weekend's itinerary.

"Intercorp," January 22, 1988

...he fired off a confidential memo to the chairman, urging all "brief sheets, option memos and other general analyses" to be sent to his office...

"Electronic Media," November 28, 1994

"Risk management is an ever-evolving process that must be continually assessed from the start to the finish of every mission; it does not end when the mission brief sheet and risk assessment worksheet are signed," he wrote.

"Connecticut Post," July 10, 2003

Leith's Briefsheet

Distinctions of Change

LEITH'S BRIEFSHEETS Each Leith's Briefsheet focuses on a concept or tool that change agents and innovation activists may find useful.

...In this Leith's Brief Sheet you will find.... we hope the Leith's Brief Sheet enriches your understanding of this complex subject.

www.martinleith.com/docs_pdf/change_briefsheet.pdf

Wedding Information: Brief Sheet
[followed by bullets on "Costs of
renting the Chapel," "Chapel
statistics" etc.]
[www.cc.colorado.edu/religiouslife/
WeddingInfo/briefsheet.html](http://www.cc.colorado.edu/religiouslife/WeddingInfo/briefsheet.html)

PUBLIC WORKS BRIEF SHEET
[followed by information under the
topics Summary, Background, Proposal]
[www.ci.Missoula.mt.us/ftpoot/Epackets/
2001-10-22/ordinance%/20changes%/
20brief%20sheet.htm](http://www.ci.Missoula.mt.us/ftpoot/Epackets/2001-10-22/ordinance%/20changes%/20brief%20sheet.htm)

PROCUREMENT BRIEF SHEET
[followed by a listing of items that
need to be completed, e.g., Contract
Number, Proposed Award to, Names of
Services/Program]
[www.msc.navy.mil/instructions/pdf/
m57005.pdf](http://www.msc.navy.mil/instructions/pdf/m57005.pdf)

Mental Health Agency Brief Sheet
[followed by such topic headings, with
bullet information, as Mission,
Structure, Functions and Special
Achievements and Local Needs)

It is clear from these excerpts that "brief sheet" is a recognized term for an information summary. Although the etymology of this term is not clear from this record--perhaps it derives from "briefing paper"--it is clear that this is an accepted term used to describe papers having information summaries or points of information. Pamphlets are, by their very nature, short pieces. When BRIEF SHEETS is used in connection with either written or online instructional pamphlets on various subjects, the mark will immediately convey to consumers that the pamphlets contain

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an information summary for or points of information on the particular subject being addressed in the pamphlets.

Accordingly, we find that it is merely descriptive of applicant's identified goods and services.

Decision: The refusal of registration is affirmed.